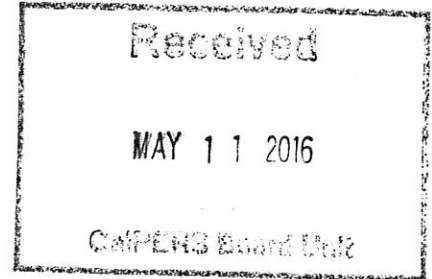


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9 BOARD OF ADMINISTRATION
10 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

11 In the Matter of the Appeal Regarding
12 Death Benefits Payable Upon the Death of
13 GRANTLAND LEE JOHNSON by

Case No. 2015-0373
OAH No. 2015081045

14 LEE TURNER JOHNSON,

15 Respondent.

16 **RESPONDENT LEE TURNER**
17 **JOHNSON'S REQUEST FOR**
18 **INTRODUCTION OF EVIDENCE NOT**
19 **CONTAINED IN THE ADMINISTRATIVE**
20 **RECORD**

Hearing Date: May 18, 2016
Hearing Location: CalPERS Headquarters
Robert F. Carlson Auditorium

21 Respondent Lee Turner Johnson ("Respondent" or "Mrs. Johnson") seeks to introduce
22 four declarations not included in the Administrative Record as evidence on an issue that never
23 arose in the underlying proceedings, namely the legitimacy or validity of Grantland Johnson's
24 marriage to Lee Turner Johnson and whether any "deathbed marriage" may have induced a
25 "deathbed election" by Grantland Johnson. Three of these declarations are attached hereto as
26 Exhibit A to this Request. The declarations of Messrs. Bill Camp, Robert J. Slobe and Leron Lee
27 constitute clear and relevant evidence that Grantland Johnson's efforts to designate Mrs. Johnson
28 as his beneficiary to his CalPERS medical, dental and option 2 benefits were not the product of a
deathbed election. Rather, they help establish that he clearly intended that she receive these
benefits.

1 In addition to the three attached declarations, Mrs. Johnson seeks to introduce the
2 declaration of the Honorable Kimberly J. Mueller. Counsel for Mrs. Johnson contacted Judge
3 Mueller and she advised that the judicial canons prevent her from volunteering a declaration in
4 this matter. However, Mrs. Johnson's counsel served a subpoena on Judge Mueller on Thursday
5 May 5, 2016 seeking a declaration from her to the extent that it provides additional facts or
6 clarification on the validity of the marriage between Grantland Johnson and Mrs. Johnson—Judge
7 Mueller presided over their marriage—or his related intent to designate Mrs. Johnson as his
8 beneficiary for CalPERS medical, dental and option 2 benefits. The Declaration of Honorable
9 Kimberly J. Mueller is attached hereto as Exhibit B.

10 **A. CalPERS Raised The Issue Of Deathbed Elections And Deathbed Marriages**
11 **For The First Time In Its Closing Brief.**

12 It was not until CalPERS submitted its Closing Brief on December 18, 2015, and over two
13 months after the October 6, 2015 hearing before Administrative Law Judge Coren D. Wong, that
14 CalPERS for the first time raised issues pertaining to “deathbed elections” and “deathbed
15 marriages” in this matter. (CalPERS Closing Br. at p. 11 (invoking the legislative intent of
16 Government Code section 21462 as evidence that the Legislature was concerned with “deathbed
17 elections”).) Respondent seeks to introduce evidence to demonstrate that CalPERS' eleventh
18 hour reliance on this legislative intent and any notion of impropriety underlying the marriage
19 between Grantland Johnson and Mrs. Johnson is entirely unfounded and misplaced in this case.
20 Mrs. Johnson did not previously obtain these declarations as they were not necessary prior to
21 CalPERS filing its Closing Brief, which raised this issue for the first time.

22 It is a fundamental principal of our judicial system that parties should be afforded the
23 opportunity to respond to new arguments raised for the first time in a closing brief. (*See El Pollo*
24 *Loco v. Hashim* (9th Cir. 2003) 316 F.3d 1032, 1040-41 (permitting opposing party an
25 opportunity to respond to a new argument raised in the reply brief).) Here, CalPERS improperly
26 made a new argument in its Closing Brief insinuating that Grantland Johnson made a deathbed
27 election and therefore, Mrs. Johnson's claim for his lifetime option 2 benefits should be denied.
28 She should clearly be afforded the opportunity to respond to this new argument. The attached

1 declarations rebut CalPERS' argument that Grantland Johnson attempted to appoint Mrs. Johnson
2 as his beneficiary on his deathbed or pursuant to a "deathbed marriage." CalPERS' argument
3 plainly attempts to call into question the legitimacy of their marriage and Grantland Johnson's
4 intent to designate Mrs. Johnson as a beneficiary of his CalPERS benefits.

5 **B. These Declarations Are Highly Relevant To Demonstrate That Grantland**
6 **Johnson Was Not Induced To Name Lee Turner Johnson As His Beneficiary.**

7 Relevant evidence is any evidence "having any tendency in reason to prove or disprove
8 any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.)
9 Administrative courts have an even broader scope, where "[a]ny relevant evidence shall be
10 admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the
11 conduct of serious affairs, regardless of the existence of any common law or statutory rule which
12 might make improper the admission of the evidence over objection in civil actions." (Gov. Code,
13 § 11513, subd. (c); *Donley v. Davi* (2009) 180 Cal.App.4th 447, 461-62 [103 Cal.Rptr.3d 1].)

14 In its Closing Brief, CalPERS raised the possibility that Grantland Johnson was somehow
15 induced on his deathbed into designating or attempting to designate Mrs. Johnson as the
16 beneficiary of his option 2 lifetime benefits. The attached declarations directly relate to that
17 assertion and seek to prove the legitimacy of the marriage between Grantland Johnson and Lee
18 Turner Johnson. By questioning the motives behind Grantland Johnson's marriage to Mrs.
19 Johnson, CalPERS also suggests that the intent behind Grantland Johnson's efforts to designate
20 Mrs. Johnson as his CalPERS beneficiary was also obscured or untowardly influenced.
21 Accordingly, the declarations help demonstrate Grantland Johnson's clear and manifest intentions
22 to name Mrs. Johnson as the beneficiary of his lifetime option 2 benefits.

23 **C. The Declarations Evidence Grantland Johnson's Intent And Are Admissible**

24 As discussed above, administrative courts have wide latitude in the evidence allowed. Not
25 only are the attached declarations permissible under the broad scope granted in administrative
26 hearings, but Evidence Code section 1251 permits hearsay evidence to show a declarant's state of
27 mind "including a statement of intent [or] plan" if the declarant is now unavailable and the
28 "evidence is offered to prove such prior state of mind . . . when it is itself an issue in the action

1 and the evidence is not offered to prove any fact other than such state of mind” (Evid.
2 Code, § 1251.)

3 There is no doubt that Grantland Johnson’s intent is at issue in this action. CalPERS itself
4 argued in its Closing Brief that Grantland Johnson’s intent was “speculate[ve]” and
5 “unascertainable.” (CalPERS Closing Br. at 21.) Furthermore, it is undisputed that Grantland
6 Johnson is unavailable. Grantland Johnson died on August 19, 2014. The four attached
7 declarations evidence the declarants’ impressions of Grantland Johnson’s marriage to Mrs.
8 Johnson and describe conversations each of the declarants had with Grantland Johnson regarding
9 his marriage and intent to name Mrs. Johnson as the beneficiary of his medical, dental and option
10 2 lifetime benefits. In fact, declarant Honorable Kimberly J. Mueller presided over their
11 wedding. Declarant Robert J. Slobe served as a witness to their marriage. Grantland Johnson did
12 not make a deathbed designation, as insinuated by CalPERS, and these declarations are clearly
13 admissible under the California Evidence Code to demonstrate Mr. Johnson’s intent.


14 For the foregoing reasons, Respondent seeks to have the attached declarations introduced
15 as evidence before the Board.

16 Date: May 6, 2016.

Respectfully submitted,

KERSHAW, COOK & TALLEY, PC

18
19 By:



Ian J. Barlow
Counsel for Respondent

EXHIBIT A

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9 BOARD OF ADMINISTRATION
10 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

11 In the Matter of the Appeal Regarding
12 Death Benefits Payable Upon the Death of
13 GRANTLAND LEE JOHNSON by

Case No. 2015-0373
OAH No. 2015081045

14 LEE TURNER JOHNSON,

**NOTICE OF DECLARATION AND
DECLARATION OF BILL CAMP**

15 Respondent.
16

17 **NOTICE OF DECLARATION**

18 The declaration of Bill Camp set forth below will be introduced as evidence in *In the*
19 *Matter of the Appeal Regarding Death Benefits Payable Upon Death of Grantland Lee Johnson*
20 *by Lee Turner Johnson, Respondent, Ref. No. 2015-0373.*

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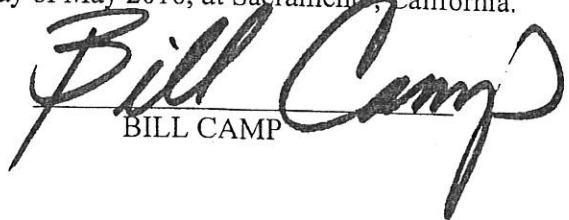
1 award Grantland Johnson full interest in his CalPERS pension benefits. He believed that she was
2 unfairly holding up the process. However, there is no question that he did not want the existing
3 beneficiaries to receive his CalPERS benefits and wanted to designate Lee Turner Johnson as his
4 new beneficiary. He made that clear to me.

5 7. We never discussed the plans that he had for his CalPERS benefits with the
6 understanding that his death was in any way imminent or that he was making arrangements
7 believing that he would soon die. Rather, these were arrangements that he wanted to make in part
8 as a recognition of his marriage to Lee Turner Johnson.

9 8. Grantland Johnson never represented to me that there was anyone else other than
10 Lee Turner Johnson whom he wanted to designate as his new beneficiary for CalPERS benefits.

11 9. Based on my knowledge of Grantland Johnson and his relationship with Lee
12 Turner Johnson, it is my firm belief that Grantland Johnson intended for Lee Turner Johnson to
13 be designated as his beneficiary for his medical, dental and Option 2 lifetime monthly benefits.
14

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct. Executed this 5th day of May 2016, at Sacramento, California.

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18 BILL CAMP
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9 **BOARD OF ADMINISTRATION**

10 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

11 In the Matter of the Appeal Regarding
12 Death Benefits Payable Upon the Death of
13 GRANTLAND LEE JOHNSON by

Case No. 2015-0373
OAH No. 2015081045

14 LEE TURNER JOHNSON,

**NOTICE OF DECLARATION AND
DECLARATION OF ROBERT J. SLOBE**

15 Respondent.
16

17 **NOTICE OF DECLARATION**

18 The declaration of Robert J. Slobe set forth below will be introduced as evidence in *In the*
19 *Matter of the Appeal Regarding Death Benefits Payable Upon Death of Grantland Lee Johnson*
20 *by Lee Turner Johnson, Respondent*, Ref. No. 2015-0373.

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8. We never discussed the plans that he had for his CalPERS benefits with the understanding that his death was in any way imminent or that he was making arrangements believing that he would soon die. Rather, these were arrangements that he wanted to make in part as a recognition of his marriage to Lee Turner Johnson.

9. Grantland Johnson never represented to me that there was anyone else other than Lee Turner Johnson whom he wanted to designate as his new beneficiary for CalPERS benefits.

10. Based on my knowledge of Grantland Johnson and his relationship with Lee Turner Johnson, it is my firm belief that Grantland Johnson intended for Lee Turner Johnson to be designated as his beneficiary for all of his CalPERS benefits.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 6 day of May 2016, at 2342, California.



ROBERT J. SLOBE

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9 **BOARD OF ADMINISTRATION**

10 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

11 In the Matter of the Appeal Regarding
12 Death Benefits Payable Upon the Death of
13 GRANTLAND LEE JOHNSON by

Case No. 2015-0373
OAH No. 2015081045

14 LEE TURNER JOHNSON,

**NOTICE OF DECLARATION AND
DECLARATION OF LERON LEE**

15 Respondent.
16

17 **NOTICE OF DECLARATION**

18 The declaration of Leron Lee set forth below will be introduced as evidence in *In the*
19 *Matter of the Appeal Regarding Death Benefits Payable Upon Death of Grantland Lee Johnson*
20 *by Lee Turner Johnson, Respondent*, Ref. No. 2015-0373.

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1 Lee Turner Johnson whom he wanted to designate as his new beneficiary for CalPERS benefits.

2 7. Based on my knowledge of Grantland Johnson and his relationship with Lee
3 Turner Johnson, it is my firm belief that Grantland Johnson intended for Lee Turner Johnson to
4 be designated as his beneficiary for his medical, dental and lifetime option 2 benefits.
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6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct Executed this 4 day of May 2016, at Sacramento
8 California
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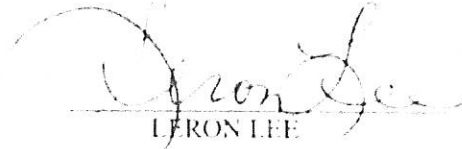
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EXHIBIT B

DECLARATION OF KIMBERLY J. MUELLER

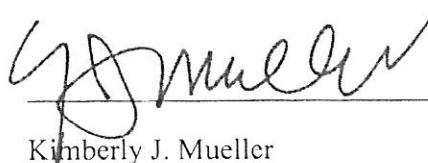
1. I have personal knowledge of the matters set forth in this declaration, which I am providing in response to the subpoena served on me by Ian J. Barlow, counsel for Lee Turner Johnson. If called as a witness I would be competent to testify, and could and would testify as to the truth of the matters set forth below.
2. I was a close personal friend of Grantland L. Johnson. We first met on election night in November 1982, when I was assigned to walk precincts with Grantland in Oak Park. From that night on, we stayed in close touch. I walked many precincts with him in each of his own elections, to the Sacramento City Council and the Sacramento County Board of Supervisors. After I was elected to the Sacramento City Council in 1987, when Grantland then served on the Board of Supervisors, he was my closest friend and confidante in the political arena. After he and I each left elected office, we continued to stay in close communication, seeing each other socially at least several times a year. In the last five years or so before Grantland's death, my husband and I would attend the Monterey Jazz Festival with Grantland. In the last several years before his death, Grantland's partner Lee Turner was with him every time we socialized together, and she attended the Festival with us.
3. Once Grantland's first marriage was dissolved, he formally asked Lee to marry him, and shortly thereafter the two of them asked me to officiate as they took their wedding vows. Because I am a federal trial judge, California law gives me the authority to solemnize marriages in this state. I preside over wedding ceremonies occasionally, and typically only for close friends and family that I know well enough to feel that the ceremony is authentic. Grantland and Lee first wanted an intimate, private ceremony, and so I officiated over that ceremony held in my chambers midday on November 15, 2013. During the ceremony Grantland and Lee each shared deeply personal and spontaneous statements of affection, love and respect for each other. My husband Bob Slobe witnessed the marriage and I signed the marriage certificate. After the ceremony, the four of us had a light lunch together in my chambers.
4. To share their wedding with friends and family, Grantland and Lee held a public ceremony with a dinner at Biba restaurant on the evening of December 8, 2013. I also presided over this ceremony, at which we recreated in part the official ceremony held previously in my chambers.

Continued . . .

5. I would not have presided over either the official private or the celebratory public wedding ceremony of Grantland Johnson and Lee Turner if I believed their marriage was a sham. I in fact believe their marriage was completely valid, and Grantland very much wanted Lee to be his lawful wedded wife.
6. Although I believe Grantland and Lee thought they would have more time together than they did, Grantland's health deteriorated precipitously in the summer of 2014. After Grantland was admitted to the hospital, I visited him regularly. Every time I was there I saw Lee acting as his zealous patient advocate, and personally doing every imaginable thing she could to ensure he received every treatment available, that his pain was managed and that his life was extended. On one occasion, because Lee had been by Grantland's side nonstop without sleep for days on end, I relieved her and stayed overnight with Grantland so that she could go home for one night to shower and rest before returning. Whenever I saw Grantland during this difficult time, although he was in pain often, he was alert and keenly aware of his circumstances. At one point when I was in his hospital room with Grantland and Lee, I personally saw Grantland sign one document providing that Lee would be his beneficiary with respect to any benefits to which he was entitled under the CalPERS system. While Grantland's ability to sign was somewhat compromised by his condition and the IV tubes attached to his arm, the signature was his and I believe he intended to sign with knowledge of what he was signing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 6th day of May, 2016, at Sacramento, California.



Kimberly J. Mueller